

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6612 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 - Yes

2 to 5 - No

HEIRS OF CHHOTUBHAI VARIBHAI PATEL

Versus

SPL.LAND ACQUISITION OFFICER

Appearance:

MR DF AMIN for Petitioners

MR.UDAY BHATT,GOVERNMENT PLEADER for Respondent No. 1, 3

MR PRANAV G DESAI for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/12/97

ORAL JUDGEMENT (Per: C.K.Thakkar,J.)

This petition is filed by one Chhotabhai Veribhai Patel who died during the pendency of the petition and whose heirs and legal representatives have been brought on record. It is for an appropriate writ, direction or

order quashing and setting aside orders at Annexures "J" and "K" dated January 5, 1988 and March 7, 1988 respectively, and by directing Special Land Acquisition Officer, respondent no.1 herein, to determine compensation to be paid to the petitioner in accordance with the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

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#. It was the case of the petitioner that (deceased) Chhotabhai Veribhai Patel was the owner of land bearing survey No.640/1 of Village Gorva, Taluka and District Baroda. At the instance of Baroda Municipal Corporation, respondent No.2 herein, proceedings were initiated by the authorities in accordance with the provisions of the Act and a notification under Sec.4 of the Act was issued in 1974 while notification under Sec.6 was issued in 1975. Individual notices were also issued. Subsequently, however, the Corporation decided not to acquire the land and for that purpose, a letter was addressed to the competent authority on August 19, 1980. Accordingly, a decision was taken to release the land from acquisition.

#. After the release of land, the petitioner lodged this claim in accordance with the provisions of Sec.48 of the Act which provides for award of compensation where acquisition proceedings are dropped. It reads thus:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-(1) Except in the case provided for in Sec.36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

#. A claim of Rs.2,63,602/- was lodged by the

petitioner before the Land Acquisition Officer by way of damages and/or compensation under sec.48 of the Act, but it was rejected and nothing was paid. Similarly, an application to make reference in accordance with the provisions of Sec.48(2) was also rejected. These orders are challenged in the present petition.

#. Mr.D.F.Amin, learned counsel for the petitioner, contended that once a decision was taken to release land from acquisition, an application filed by the petitioner under Sec.48(2) before the Land Acquisition Officer was maintainable and he ought to have decided it in accordance with the law. Drawing our attention to a communication dated July 29, 1985 (Annexure "H") addressed by the Land Acquisition Officer, it was submitted that the proceedings for award of compensation under Sec.48 were initiated by the Land Acquisition Officer and the petitioner was called upon to remain present to support his claim. Mr.Amin contended that even if the petitioner did not remain present or did not produce any evidence and/or material in support of his claim, it was incumbent on the part of the Land Acquisition Officer to pass an appropriate order granting compensation as he deemed fit. It was not open to him to reject the application in toto. He also submitted that the orders passed on 5th of January, 1988 and 7th of March, 1988 were also illegal and contrary to law. It was incumbent on the part of Land Acquisition Officer to make reference under Sec.48(3) and by not doing so, he has committed an error of law apparent on the face of the record which requires to be interfered by this Court.

#. Mr.P.G.Desai, learned counsel for respondent no.2 Corporation, on the other hand, supported the order. He submitted that proceedings were initiated under the Act for acquisition of land, but at the request of the petitioner, a proposal was submitted by the Corporation to withdraw the proceedings of acquisition and to release the land in question. For that, he drew our attention to Annexure "C" dated October 3, 1981 wherein it was mentioned that at the request of the owner, the Municipal Corporation had written a letter on August 19, 1988 (no.688/80-81). If in the light of the above request of the petitioner, a letter was written by the Corporation to authorities to release the land from acquisition and accordingly the land was released, the petitioner cannot ask for compensation or to seek reference under Sec.48 of the Act. No doubt, Mr.Amin contended that the contents of a letter dated 3rd of October, 1981 were not true and the petitioner had informed the authorities by a letter dated October 21, 1981 that he was not aware of any

letter said to have been written by the Municipal Corporation to authorities that at the request of the petitioner such a prayer for release of land was made.

#. In our opinion, however, there is a word against word. At the most a disputed question of fact arises which ordinarily will not be decided exercising extraordinary jurisdiction under Article 226 of the Constitution of India. When it was stated in the letter as early as back in 1981 that the proceedings were dropped pursuant to the request made by the owner and accordingly decision was taken and land was released from acquisition and the petitioner was informed, it would not be appropriate to grant relief in the present petition.

#. A question was also raised as to whether the petition would lie directing the authorities to make reference under Sec.48 of the Act and for that, our attention was invited to following decisions:

Ramaji Baliramji Sawarkar Vs. Special Land
Acquisition Officer (General, Nagpur and others -
AIR 1974 Bombay 249.

Krishnakunj Co-operative Housing Society Ltd.
and others Vs. Special Land Acquisition
Officer(X), Mehsana and others - AIR 1989 Gujarat
165.

Attention of the Court was also drawn to Chandrakant
Chhotalal Gandhi & Ors. Vs. State of Gujarat and
another, (1980) 21(2) GLR 132.

#. In our opinion, in the facts and circumstances of the case, it is not necessary to decide the point as from the record it appears (though it is disputed on behalf of the petitioner) that at the request of the petitioner proceedings were dropped and land was released from acquisition. Hence, in our opinion, no relief can be granted to the petitioner in the present proceedings. It is, however, open to him to take appropriate proceedings, if it is open in accordance with the law. Rule is accordingly discharged. No order as to costs.

Sd/-

(C.K.Thakkar, J.)

Sd/-

15-12-1997 (R.P.Dholakia, J.)

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